

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

and

COMMONWEALTH OF
PENNSYLVANIA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Plaintiffs,

v.

CAPITAL REGION WATER

and

THE CITY OF HARRISBURG, PA,

Defendants.

Civil Action No. 1:15-cv-00291-CCC

(Judge Christopher C. Conner)

**DEFENDANT CAPITAL REGION WATER'S RESPONSE IN
OPPOSITION TO LOWER SUSQUEHANNA RIVERKEEPER
ASSOCIATION'S MOTION TO INTERVENE**

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SUMMARY OF ARGUMENT

After waiting nearly six years following the negotiation and entry of a complex Partial Consent Decree (“PCD”), Lower Susquehanna Riverkeeper Association (“LSRA”) now seeks to intervene in this case, which is administratively-closed, and disrupt the Parties’¹ carefully negotiated settlement and ongoing implementation of the PCD. This motion for intervention is both too late and too early. The motion is too late to challenge the adequacy of the PCD, which was entered by the Court nearly six years ago and settled CRW’s liability on a number of issues. And, the motion for intervention is too early with respect to the final consent decree between the Parties resolving any outstanding claims.

The Court should deny the LSRA’s motion to intervene because the motion is both procedurally and substantively flawed. First, the case is administratively closed, no party has asked the Court to re-open the matter, and LSRA, as a non-party, has no authority to request that this Court re-open the matter. Second, several of LSRA’s allegations in its proposed complaint-in-intervention are aimed at enforcing the PCD—an agreement that LSRA has no legal right to enforce. Third, LSRA’s other claims relate to the adequacy of the PCD itself, and those claims must

¹ Plaintiffs, the United States and the Commonwealth of Pennsylvania Department of Environmental Protection (“DEP”) (collectively, “Governments”) and Defendants Capital Region Water (“CRW”) and the City of Harrisburg (“City”) are each “Parties” to the PCD and to this litigation.

be dismissed as untimely because LSRA waited for six years to raise them. If this Court grants LSRA's motion over the Parties' objections, CRW requests that the Court limit the scope of potential intervention issues to the adequacy of any the final consent decree, and strike all allegations in LSRA's proposed complaint that fall outside the permissible scope of intervention as discussed in detail below.

BACKGROUND

Since entry of the PCD, CRW has been working diligently to meet the deliverables under the PCD and has spent over \$100 million on infrastructure repairs and improvements to implement the requirements of the PCD. The PCD required CRW to submit a number of deliverables to be reviewed, commented on, and, in some instances, approved by EPA, in consultation with DEP, and then implemented. The major deliverable for the combined sewer system, the Long Term Control Plan ("LTCP"), was due on April 1, 2018. *See* PCD, Section V, ¶ 14, ECF. No. 11. CRW submitted its LTCP on March 29, 2018 and has engaged in numerous subsequent meetings and conversations with EPA regarding the LTCP. As the Parties acknowledged in their 2018 Joint Status Report to the Court, the PCD "likely will not terminate for several more years: EPA's approval of these complex, long-term plans can take a year or more, and often requires extensive negotiations with the municipality. Even after approval of the LTCP, CRW must satisfy a number of requirements to terminate the Partial Consent Decree, including sustaining

compliance for a full year.” *See* Joint Status Report at 2–3, ECF No. 18. In the Joint Status Report, EPA stated that it believed that “CRW was making appropriate progress under the PCD.” The fact that the Governments and CRW are still working through issues relating to the LTCP and implementing additional projects is contemplated and fully accounted for by the process established and outlined in the PCD. The PCD contemplates and provides a specific process for dispute resolution relating to deliverables under the PCD and also establishes stipulated penalties for failure to meet the PCD requirements.

LSRA points to an April 27, 2020 letter from EPA to CRW in an attempt to demonstrate that CRW has somehow failed to meet its obligations under the PCD. This letter, however, simply demonstrates that the process for negotiation, dispute resolution, and implementation of the PCD is working. On June 2, 2020, CRW responded to EPA’s letter detailing, in part, the reasons why CRW’s LTCP submission constituted an approvable plan that is consistent with the PCD and with EPA guidance. *See* Letter Charlotte Katzenmoyer, CRW to Stacie Pratt, EPA (June 2, 2020) (attached as Exhibit A). This exchange did not rise to the level of dispute resolution or stipulated penalties and is not any indication that CRW is not complying with the PCD or that the Governments are not diligently enforcing the PCD. To the contrary, this exchange merely demonstrates that the Parties are committed to working in good faith toward full implementation of the PCD. LSRA

should not be permitted to interfere with the Parties' ongoing process at this late stage.

ARGUMENT

I. LSRA's Motion to Intervene is Procedurally and Substantively Improper and Must Be Denied.

A. LSRA, as a Non-Party, Cannot Reopen this Case

Only a party to a case may move to reopen the matter. *See Rim M. Tursom v. United States*, No. 20-cv-20811, 2021 WL 1647888, at *2 (S.D. Fla. Apr. 27, 2021) (quoting *Lehman v. Revolution Portfolio LLC*, 166 F.3d 389, 392 (1st Cir. 1999)). Either the court, of its own accord, or the parties, by request, can reopen an administratively closed case. *See Fla. Ass'n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296, 1298 (11th Cir. 2001). In *Tursom*, the court denied the non-party's motion seeking to reopen an administratively-closed case in order to file a motion to intervene, finding no support for the proposition that a proposed-intervenor, as a non-party, can move to reopen an administratively-closed case. 2021 WL 1647888, at *2. Here, LSRA has not even moved to reopen the case, and instead simply improperly filed a motion in a closed case. But, even if LSRA had attempted to first reopen the case, it would have had no basis, as a non-party, to do so.

B. LSRA Cannot Intervene for the Purpose of Enforcing the PCD.

Even if LSRA was a party to the original matter, it still would not have any authority to enforce the PCD. The CWA’s citizen suit provision permits intervention to enforce “an effluent standard or limitation” or “an order issued by the [EPA] Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1). But, the citizen suit provision says nothing about intervening to enforce the terms of consent decrees reached between other parties. *See Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 152 (4th Cir. 2000).

As a proposed-intervenor, LSRA must identify a proper purpose to seek intervention as of right under 33 U.S.C. § 1365(b)(1)(B). As one court explained after an exhaustive review of the history of the citizen suit provision, the CWA permits intervention only for the purposes of enforcing effluent standards and related orders, and not for any other purpose:

It thus follows from the language of the statute. . . that the right to intervene under § 1365(b)(1)(B) is coextensive with the right to initiate suit pursuant to § 1365(b)(1)(A); that is, that the right to intervene in an action is no greater than the right to initiate a suit in the first place. Thus, although it is true. . . that the right to intervene as it is expressed in the statute is unconditional, it does not follow that the purposes motivating that intervention are similarly unconstrained. . . . [I]n short, the statute unconditionally allows intervention, but only in cases where enforcement of an effluent standard or order respecting such a standard is at issue.

United States v. Metro. Dist. Comm’n, 679 F. Supp. 1154, 1158 (D. Mass. 1988) *aff’d in part, appeal dismissed in part*, 865 F.2d 2 (1st Cir. 1989).

Although LSRA's motion to intervene and proposed complaint-in-intervention purportedly seek to enforce the CWA and related state law, several of its allegations seek to enforce the PCD. *See generally* LSRA's Proposed Compl.-in-Intervention, ECF No. 30-1 (alleging that CRW discharged SSOs in violation of the PCD; discharged dry weather CSOs in violation of PCD; and failed to meet certain deliverables under the PCD relating to NMCs and the LTCP). LSRA is not entitled to intervene under § 1365(b)(1)(B) to enforce compliance with the PCD because LSRA could not initiate its own lawsuit for alleged violations of the PCD.

C. LSRA, as a Non-Party to the PCD, Lacks Any Legal Right to Enforce its Terms.

LSRA is similarly prohibited from petitioning the court for orders requiring compliance with the PCD because LSRA does not have a legal right to enforce the decree. LSRA is not a party to the PCD and, therefore, cannot enforce its terms. The Supreme Court has explicitly held that "a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750 (1975). Several other circuit courts have applied this principle across different areas of law as well. *See United States v. FMC Corp.*, 531 F.3d 813 (9th Cir. 2008); *Antonelli v. New Jersey*, 419 F.3d 267, 273 (3d Cir. 2005); *Reynolds v. Butts*, 312 F.3d 1247, 1249 (11th Cir. 2002); *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952 (8th Cir. 2002); *S.E.C. v. Prudential Securities, Inc.*, 136

F.3d 153, 158-60 (D.C. Cir. 1998); *Aiken v. City of Memphis*, 37 F.3d 1155, 1168 (6th Cir. 1994); *Gautreaux v. Pierce*, 743 F.2d 526, 533 (7th Cir. 1984).

Even if intervention is granted, LSRA could still not enforce the PCD. The relevant question is whether the party seeking to enforce a consent decree is a party to the agreement, not simply a party in the lawsuit. For example, in *FMC Corp.*, the Shoshone-Bannock Tribes successfully intervened in EPA's enforcement action against a mining company under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k. 531 F.3d at 815. Although the Tribes participated in negotiations and objected to entry of the consent decree in that case, the resulting consent decree was between EPA and the defendant. *Id.* When the Tribes petitioned to enforce the consent decree, which required the defendant to make payments directly to the Tribes, the court found that the Tribes, as nonparties, did not have a legal right to enforce the decree. *Id.* at 816, 822; *see also Sanders v. Republic Servs. of Kentucky, LLC*, 113 Fed. App'x 648, 650 (6th Cir. 2004) (holding that landowners who were parties to the original action, but not parties to a consent decree, could not enforce the consent decree). Similarly, LSRA, as a non-party to the PCD, does not have a legal right to enforce the terms of the PCD.

II. Under Both Rule 24(a)(1) and (a)(2), LSRA's Motion to Intervene is Untimely and Must be Denied.

A. LSRA's Motion to Intervene is Untimely Because the PCD Was Entered Nearly Six Years Ago.

Whenever an entity seeks to intervene under Fed. R. Civ. P. 24, it must demonstrate that its motion is timely. *NAACP v. New York*, 413 U.S. 345, 365-366 (1973); *Choike v. Slippery Rock Univ. of Pa.*, 297 F. App'x 138, 140 (3d Cir. 2008). The Third Circuit has explained that the timeliness inquiry requires consideration of “all [of] the circumstances,” and assesses three factors: “(1) how far the proceedings have gone when the movant seeks to intervene, (2) the prejudice which resultant delay might cause to other parties, and (3) the reason for the delay.” *Choike v. Slippery Rock Univ. of Pa.*, 297 F. App'x 138, 140 (3d Cir. 2008) (quoting *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir. 1982)).

LSRA's brief fails to adequately address the fact that it waited nearly six years following the Court's approval of the PCD to intervene in this action. Precedent does not support LSRA's position. The main cases on which LSRA relies to demonstrate timeliness are procedurally and substantively distinguishable. In *Mountain Top Condo. v. Ass'n v. Dave Stabbert Master Builder, Inc.*, no consent decree or other settlement had been achieved, and the parties had not even taken depositions or filed dispositive motions at the time of intervention. 72 F.3d 361, 370 (3d Cir. 1995). Further, the intervenors in *Mountain Top*, only became aware of the

risks to its rights two months prior to filing the motion for intervention. Another case on which LSRA relies, *Am. Farm Bureau Fed'n v. U.S. E.P.A.*, involved motions for leave to intervene filed four months after a complaint had been filed, initiating the case, and where no settlement had been reached. 278 F.R.D. 98, 101 (M.D. Pa. 2011).

Notably, *Mountain Top*, on which LSRA relies, actually counsels against allowing for intervention in circumstances where a consent decree has been entered, explaining that “a motion to intervene *after an entry of a decree* should be denied except in extraordinary circumstances.” *Id.* (citing *In re Fine Paper Antitrust Litigation*, 695 F.2d at 500 (emphasis in original)). In fact, several courts have held that applications for intervention post-judgment are generally denied. *See, e.g., Choike*, 297 F. App’x at 141-142 (upholding denial of a motion for intervention that was filed after the district court had preliminarily approved a consent decree). In other words, “waiting until after entry of a consent decree weighs heavily against intervention.” *United States v. State of Or.*, 913 F.2d 576, 588 (9th Cir. 1990) (denying intervention following entry of a consent decree) (citing *County of Orange v. Air California*, 799 F.2d 535, 538 (9th Cir.1986) (entry of settlement after five years of litigation preceded by well-publicized negotiations is too late a stage to intervene), *cert. denied*, 480 U.S. 946 (1987)). In order to justify post-judgment intervention, a movant would need to demonstrate that the decree had an

“unexpected effect on a nonparty” or that an “unusual circumstance” warranted intervention. *State of Or.*, 913 F.2d at 588–89 (describing “deception [as] an ‘unusual circumstance’ weighing in favor of intervention”). In this matter, LSRA has not, and cannot, allege any unexpected effects or extraordinary circumstances to justify intervention nearly six years after entry of the PCD.

The circumstances that LSRA does describe—namely, the Parties’ ongoing work and negotiations toward developing and approving a LTCP—are not extraordinary and, in fact, were fully contemplated by the Parties, this Court, and the PCD. As the Parties acknowledged in their 2018 Joint Status Report to the Court, the PCD “likely will not terminate for several more years: EPA’s approval of these complex, long-term plans can take a year or more, and often requires extensive negotiations with the municipality. Even after approval of the LTCP, CRW must satisfy a number of requirements to terminate the Partial Consent Decree, including sustaining compliance for a full year.” *See* Joint Status Report, ECF No. 18, at 2–3. At the time of the Joint Status Report, EPA stated that it believed “CRW was making appropriate progress under the PCD.” *Id.* at 3. The fact that the Governments and CRW are still working through issues relating to the LTCP and implementing additional projects was expected. The PCD contemplates and provides a specific process for dispute resolution relating to deliverables under the PCD and also

provides stipulated penalties for failure to meet the PCD requirements. *See* PCD, ECF No. 11, at 60–67, 70–72.

Here, LSRA was, or should have been, aware of its purported interest in this litigation, which LRSA characterizes as “the illicit sewage discharges that are the subject of the suit,” from the date that the Governments initiated this action on February 10, 2015 alleging such violations. *See* LRSA Br. in Supp. of Mot. to Intervene, ECF No. 30, at p. 7. LSRA had the opportunity to comment on the PCD and failed to do so. *See* Br. in Supp. of Pl.’s Mot. for Entry, ECF No. 9 at pp. 11–13. Notably, the Governments received two public comments, both from Sierra Club in support of the settlement, but no comment from the prospective-intervenor. *Id.* The PCD was entered nearly six years ago, and CRW has been working diligently with the Governments to meet the deliverable requirements in the PCD. If anything, CRW’s ongoing efforts to improve its wastewater infrastructure and implement CSO controls since the date this action was commenced have minimized the alleged injuries that LSRA now asserts.

B. LSRA’s Delay Would Prejudice the Parties if Intervention Is Granted.

Another factor in determining timeliness is prejudice to the existing parties. *Spring Const. Co., Inc. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980). LSRA’s intervention at this late date would substantially prejudice the Parties both substantively and procedurally. First, the Parties, which included representatives of

the United States, the State, the City of Harrisburg, and Capital Region Water, negotiated the PCD “in good faith” over the course of several months to “avoid prolonged and complicated litigation,” and these negotiations resulted in a PCD that “is fair, reasonable, and in the public interest.” *See* PCD, ECF No. 11, at 8. The Court agreed and, therefore, entered the PCD on August 24, 2015. LSRA now seeks to modify the substantive terms of the PCD by requesting new or different relief than that which the Parties bargained for and agreed to. Second, LSRA’s intervention at this late stage would disrupt the process established for implementing the PCD. The PCD establishes a process by which the Parties implement its terms and resolve disputes, and LSRA seeks to impose new, different and undefined processes through its requests for injunctive relief relating to the PCD and its deliverables. These new procedures would at least conflict with, if not supplant, the dispute resolution provisions and other implementation procedures in the PCD.

Allowing LSRA to raise its contentions now through intervention, after such a long delay, threatens to undermine the Parties’ longstanding agreement and established process. *See, e.g., Blue Water Baltimore v. Mayor & City Council of Baltimore, Md.*, 583 F. App’x 157, 158 (4th Cir. 2014) (“disrupt[ing] a settled agreement would undoubtedly prejudice the existing parties”); *Cal. Dep’t of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (affirming denial of a motion to intervene as untimely because it “would

complicate the issues and upset the delicate balance achieved by the [] Consent Decree”); *City of Bloomington, Ind. v. Westinghouse Elec. Corp.*, 824 F.2d 531, 535 (7th Cir. 1987) (finding an environmental group’s motion to intervene untimely because it would “render worthless all of the parties’ painstaking negotiations”); *United States v. Metro. Water Reclamation Dist. of Greater Chicago*, 792 F.3d 821, 824–25 (7th Cir. 2015) (limiting intervention and describing intervenors’ “more modest role” in the governments’ enforcement case). Allowing a third party to join this action long after the entry of the PCD would undermine the benefit of entering into a consent decree for the settling parties—namely, minimizing litigation and focusing on remedying the municipal sewer system. *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 236 (D.D.C. 2011). As the Seventh Circuit explained:

If [an intervenor] could carry on just as if it were the plaintiff in a separate suit, that would “supplant” the governmental case. Why would anyone settle with the EPA or a state, if the settlement did not buy peace? The [defendant] made costly promises, but if the [intervenor] is right then [the defendant] got nothing in return, for the [the intervenor] can carry on with the suit. And if the [intervenor] also settled, then another person could intervene to demand still more relief. Depriving the original parties of their ability to settle disputes is not consistent with the observation in *Gwaltney*, the holding of *Friends of Milwaukee’s Rivers*, or the structure of § 1365(b).

See United States v. Metro. Water Reclamation Dist. of Greater Chicago, 792 F.3d 821, 824–25 (7th Cir. 2015) (citing *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49, 60 (1987)).

The prejudice in this case is that intervention at this late stage deprives the Parties of the benefit of finality and dispute resolution in exchange for their “costly promises.” *See id.* Further, LSRA’s intervention will only delay CRW’s ability to move forward with improvements to the municipality’s sewer system. This delay prejudices the Parties to this suit who have been diligently working toward solutions, as well as the citizens of Harrisburg who have borne the cost of implementing and now litigating the PCD. *See* LSRA Compl.-in-Intervention, ECF No. 30-1, at 33 (seeking attorneys’ fees for LSRA); *Garrity v. Gallen*, 697 F.2d 452, 457-58 (1st Cir. 1983) (noting that the incurrence of additional expense due to intervention is properly considered when weighing prejudice to the parties, particularly when discussing public resources).

In comparison to the prejudice that LSRA’s intervention will inflict on the Parties, LSRA will suffer little harm if it is not permitted to intervene in this action now. LSRA could have intervened at the outset when it learned of its alleged injuries, which, if existing now, would have existed six years earlier. LSRA declined to publicly participate in development of the PCD, and, if anything, LSRA’s alleged injuries have been mitigated by the Parties’ progress toward implementation of the PCD. Furthermore, LSRA will have an opportunity to be heard regarding the final consent decree through the public comment process.

The Parties are currently in the process of implementing the PCD and negotiating a final consent decree. That final consent decree will be lodged with the Court. EPA then will publish notice of the proposed decree in the Federal Register. LSRA will then have a full opportunity to raise its concerns in public comments on the final consent decree. Accordingly, denying intervention will cause little harm to LSRA while disrupting the Parties' implementation of the PCD and negotiation of the final consent decree. For all of the above reasons, the second timeliness factor of prejudice weighs heavily against allowing intervention at this time..

C. LSRA's Has Not Presented Any Adequate Justification for its Delay.

The third and final timeliness factor considers the proposed intervenor's reasons for delaying its motion for intervention. *See Choike*, 297 F. App'x at 140. LSRA has not offered a legally relevant explanation for why it waited nearly six years following entry of the PCD before seeking intervention. LSRA claims that it delayed intervention because (1) the Parties have not fully implemented the PCD, and (2) the Parties have not fully remedied the alleged violations through negotiation and entry of a final consent decree. Neither contention explains why LSRA's years of delay justify intervention at the present time. As to implementation of the PCD, LSRA has no right to enforce the PCD, and the PCD is being implemented as contemplated by the Parties to the agreement. The fact that final resolution of alleged violations has not yet occurred does not give LSRA an independent basis to

intervene at this late time. The Governments alleged violations of the CWA and related state law six years ago. At that time (if not before), LSRA should have known of its alleged injuries. LSRA could therefore have challenged the adequacy of the PCD to resolve the Governments' claims six years ago, but it chose not to. LSRA has failed to present any legitimate justification for its delay that would allow it to intervene at this point.

D. LSRA's Motion to Intervene is Premature as to the Final Consent Decree

LSRA also attempts to justify its delay in moving to intervene until now by arguing that the Parties have not yet negotiated a final consent decree. *See* LRSA Br. in Supp. of Mot. to Intervene, ECF No. 30, at p. 23. However, courts should not grant "premature intervention that wastes judicial resources." *Sierra Club v. Espy*, 18 F. 3d 1202, 1206 (5th Cir. 1994). Intervention is proper when an intervenor becomes aware that its interests are not being protected. *See id.* Here, the Parties have not yet negotiated a final consent decree, so there is no way of discerning whether or not the final consent decree would affect LSRA's interests. It would be premature to allow intervention when the final consent decree has not yet been proposed and the case is currently administratively closed.

This situation mirrors the arguments in *United States v. Metropolitan District Commission*, in which several groups moved to intervene under 33 U.S.C. § 1365(b)(1)(B) in a CWA enforcement case several years after the district court

issued a long-term scheduling order for reconstruction efforts. 679 F. Supp. 1154 (D. Mass. 1988), *aff'd in part, appeal dismissed in part*, 865 F.2d 2 (1st Cir. 1989). The proposed intervenors sought to participate fully in the case and to object to the possible siting of a sewage outfall near proposed-intervenors. *Id.* at 1156. The district court concluded that “the putative intervenors [were] both too late and too early.” *Id.* at 1157. The district court found that the proposed intervenors were “too late to assert a right to participate generally in many aspects of this case that may have some bearing on the future of the Massachusetts Bay generally and, therefore, are untimely under Rule 24(a)(1).” *Id.* And, the district court stated that the proposed intervenors’ concerns about the possible future siting of the outfall were premature. *Id.* As was the case for prospective-intervenors in *Metropolitan District Commission*, LSRA’s request to intervene to participate in the action relating to the PCD is too late, and it is too early for LSRA to seek intervention on the basis of a final consent decree, which has not yet been proposed.

III. If Permitted to Intervene, LSRA’s Scope of Intervention Should be Limited

If LSRA is permitted to intervene over the objections of the Parties, the Court should limit the scope of the intervention to objecting to the final consent decree. *See United States v. City of Detroit*, 712 F.3d 925, 933 (6th Cir. 2013) (limiting intervention “to preclude attempts to re-litigate settled facts, reports, and orders”). Imposing restrictions on intervention would still allow LSRA ample opportunity for

meaningful input, including the submission of their public comments and, upon a motion for entry of the final consent decree, the filing of appropriate legal briefs. *See District of Columbia v. Potomac Elec. Power Co.*, No. 11-00282, 2011 WL 6000851, at *4 (D.D.C. Dec. 1, 2011) (finding that the proposed intervenors were able “to protect their interests” and have their objections heard by participating as amici). Further, prospective intervenor’s claims in intervention must be limited to claims that the Governments could pursue. *See United States v. Metro. Water Reclamation Dist. of Greater Chicago*, 792 F.3d 821, 824–25 (7th Cir. 2015) (holding that the CWA does not entitle an intervenor to advance independent claims beyond that which the Government Plaintiffs seek). Accordingly, CRW reserves the right to move to dismiss, or otherwise challenge, prospective intervenor’s claims in intervention. *See United States v. United States Steel Corp.*, No. 2:18-CV-127 JD, 2021 WL 860941 (N.D. Ind. Mar. 8, 2021) (dismissing complaints-in-intervention for failure to limit claims to the scope of the enforcement action).

CONCLUSION

For the foregoing reasons, the Court should deny LSRA’s motion to intervene pursuant to Rule 24(a). If intervention is granted over the Parties’ objections, the Court should limit LSRA’s participation in intervention to challenging the adequacy of the final consent decree, and the Court should strike all allegations and claims-in-

intervention in the proposed complaint that exceed the scope of LSRA's limited rights as an intervenor.

Respectfully submitted,

/s/ Fredric P. Andes

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the word-count limit of Local Rule 7.8(b) because, excluding the exempted parts of the document (i.e., caption, tables, signature block, and footnotes), it contains no more than 5,000 words.

/s/ Fredric P. Andes

Fredric P. Andes

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2021, I electronically filed the foregoing Response in Opposition to the Motion to Intervene with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Fredric P. Andes

Fredric P. Andes

Exhibit A



PRIVILEGED AND CONFIDENTIAL

June 2, 2020

Ms. Stacie Pratt, Chief
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1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

RE: ***United States v. Capital Region Water and City of Harrisburg***
Case No. 1:15-cv-00291-WWC
Response to EPA LTCP Letter Dated April 27, 2020

Ms. Pratt:

Capital Region Water (CRW) hereby responds to your letter dated April 27, 2020 (the Letter) concerning its *City Beautiful H2O Program Plan Long-Term Control Plan* (LTCP). In the Letter, the U.S. Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (PADEP) (collectively, the Agencies) allege that CRW has not timely submitted an approvable LTCP, thereby violating the Partial Consent Decree (PCD) in the above-referenced matter and subjecting CRW to stipulated penalties.¹ CRW disagrees. In addition, the Letter identifies three specific substantive issues, concerning CRW's cost methodology, CSO reduction projects, and alternatives analysis. CRW's response to each of these issues is provided below.²

I. CRW Has Made Timely Submissions in Full Compliance with the Partial Consent Decree

CRW disagrees with the Agencies' allegation that its submissions relating to the LTCP were untimely. The Letter acknowledges that CRW first submitted its LTCP on March 29, 2018 and details numerous subsequent meetings and conversations between the parties. From the time of CRW's initial submission of the LTCP to date, CRW has timely complied with all express terms of the PCD.

¹ Based on conversations between CRW and EPA counsel, CRW understands that the Letter does not constitute disapproval or partial disapproval of the LTCP, which would trigger additional obligations under PCD Paragraph 37. In addition, by providing this response and continuing to discuss these matters with the Agencies, CRW does not waive its right to invoke dispute resolution under PCD Section XII with regard to the issues raised in the Letter.

² Also, per the recent discussions between CRW and EPA counsel, CRW is developing a proposal to address the Agencies' interest in including some early action items in the LTCP. We expect to provide that proposal soon.

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A. CRW's Initial LTCP Submittal Was Timely Pursuant to PCD Paragraph 14

CRW submitted a timely LTCP to the Agencies pursuant to the PCD. Specifically, Paragraph 14 of the PCD required that CRW submit a revised and updated LTCP to Plaintiffs "no later than April 1, 2018." CRW submitted the revised and updated LTCP on March 29, 2018 in advance of that deadline.

B. CRW's Supplemental Submissions Were Timely Pursuant to PCD Paragraph 37

CRW has complied with the timing requirements in Section VI of the PCD regarding "Review and Approval of Deliverables." The Letter states that on July 6, 2018, EPA sent CRW its first set of comments on the LTCP. The Letter further states that "[i]n accordance with the PCD, Paragraph 37.d., CRW had forty-five days to correct deficiencies in response to those comments and resubmit its report. Under Paragraph 37.f. ii. of the PCD, EPA and PADEP may seek stipulated penalties for CRW's failure to meet CD milestones, one of which is submission of an approvable LTCP." The Agencies, however, appear to misunderstand Paragraph 37 of the PCD.

If the Agencies had disapproved or partially disapproved CRW's initial LTCP submission under PCD Paragraph 37(a), Paragraph 37(d) would have required CRW to "correct all deficiencies and resubmit the plan, report, other item, or disapproved portion thereof, for approval, in accordance with the [PCD]." Following submission of the LTCP, the Agencies on July 6, 2018 provided the first of several sets of comments on various issues, summarized in the attached spreadsheet. The Agencies did not characterize those comments as a disapproval or partial disapproval of the LTCP that would have triggered the deadlines contained in Paragraph 37(d). Regardless, CRW promptly met with the Agencies on April 18, 2018 to address the Agencies' concerns with the LTCP. According to the timeline laid out in the Letter, CRW has never taken longer than 45 days to meet, discuss, and provide additional information to Plaintiffs' in response to the Agencies' comments on the LTCP.

According to PCD Paragraph 37(f), if the Agencies had disapproved or partially disapproved any CRW submissions, the Agencies had the options of 1) requiring that CRW "correct any deficiencies, in accordance with the [PCD]," or 2) correcting the deficiencies themselves, subject to CRW's rights to invoke dispute resolution and the right of the Agencies to seek stipulated penalties as provided in the PCD. The Agencies apparently conclude that Paragraph 37(f)(ii) of the PCD entitles them to seek stipulated penalties "for CRW's failure to meet CD milestones, one of which is submission of an approvable LTCP."

PCD Paragraph 37(f)(ii) does not entitle the Agencies to seek stipulated penalties here. Three conditions precedent would have to be met for Plaintiffs to seek stipulated penalties pursuant to Paragraph 37(f)(ii). First, the Agencies would need to disapprove or partially disapprove the LTCP under Paragraph 37(a), rather than simply provide comments. Second, the Agencies would need to correct the alleged deficiencies in the LTCP themselves. Third, CRW would have to fail to implement the corrected submission. Because the Agencies did not previously disapprove the LTCP, have not themselves corrected the LTCP and, consequently, CRW has not failed to implement any corrected submission, this provision does not entitle EPA to seek stipulated penalties.

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C. CRW Has Acted in Good Faith to Provide All Information Requested by the Agencies to Support LTCP Approval

The numerous meetings and conversations to which the Agencies refer in their letter demonstrate CRW's willingness and patience in working with the Agencies to provide a more than adequate basis to approve the LTCP. Plaintiffs' failure as yet to approve the LTCP is not an indication that CRW is "struggling with the concept of a LTCP." Rather, it demonstrates the Agencies' apparent misunderstanding of the significant infrastructure and economic issues facing the City of Harrisburg. Throughout this process, CRW has not only complied with the express terms of the PCD but also has gone above and beyond to fulfill the Agencies' every request for additional information, thereby providing ample information for Plaintiffs to approve the LTCP.

In the attached spreadsheet, CRW has listed each significant issue the Agencies have raised during this process and described how and when (in which meeting or call) that issue was addressed. The spreadsheet makes clear that virtually every issue raised by the Agencies has been resolved in these discussions. And, as detailed below, as to those few issues where the Agencies have not explicitly indicated that the issues are resolved, CRW has submitted more than adequate information to resolve any concerns. At no point in the entire dialogue have the Agencies stated that CRW's responses were inadequate or that the Agencies disagreed with or disapproved CRW's responses, except for the specific issues that now have been laid out in the Letter. On the contrary, CRW reasonably believed that all issues had been satisfactorily addressed and has been awaiting Agency recognition of that fact. CRW looks forward to receiving that acknowledgment, so it can move forward to implement an approved LTCP.

II. CRW Has Submitted an Approvable LTCP Consistent with the PCD and EPA Guidance

The Letter raises only three specific concerns with the LTCP and LTCP-related submissions. First, the Agencies claim that CRW has inflated the cost of small-scale remediation projects by double-counting contingency costs. Second, the Agencies claim that CRW has not submitted actual CSO projects that will reduce volume and frequency of overflows. Third, the Agencies claim that CRW has not adequately evaluated an appropriately broad range of technically feasible CSO controls, regardless of the cost of each. None of those claims is accurate.

A. CRW Provided Detailed Cost Methodology Information Consistent with EPA Guidance

CRW provided detailed, follow-up cost methodology information consistent with EPA's own *Combined Sewer Overflows Guidance for Long-Term Control Plans*, EPA 832-B-95-002 (September 1995) (LTCP Guidance). The approach CRW used for developing the system-wide and planning area alternative cost estimates is appropriate to develop planning level cost-performance evaluations as required by the PCD. The LTCP Guidance expressly provides that capital costs typically include contingency costs. "The contingency is usually developed as a percentage of the construction cost, and the engineering, legal, and administrative costs are usually combined as a percentage of the construction plus contingency." LTCP Guidance, at p. 3-49. CRW has incorporated contingency costs into its overall cost estimates, consistent with this guidance.

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The Agencies initially raised concerns regarding CRW's basis for estimating costs in its July 7, 2018 letter. CRW provided detailed responses discussing its cost methodologies first on November 9, 2018. Thereafter, on August 12, 2019, CRW provided additional, detailed information on the "costing tool" and costing process, including supplemental tables and figures to compare the cost-performance of the two system-wide and three local control strategies evaluated under the LTCP. This information included a cost evaluation of every project that CRW has publicly bid for similar work. Again, on November 27, 2019, CRW provided additional detailed written responses to the Agencies' questions regarding contingency costs.

EPA's assertion that CRW has provided inflated cost estimates that add contingency amounts on top of real costs is just not true. The cost estimates that CRW has provided are based on actual installed costs. In fact, CRW specifically provided information in a reorganized format, at the request of EPA's contractor, to provide actual cost per linear foot, which could be compared to planning numbers. Of course, it is possible that as CRW builds the planned projects, the cost could turn out to be higher or lower than expected. But that is true of any construction project – and even if that happens, all that it might change in the LTCP would be the timelines for particular projects, not the nature of the projects that will be completed. This inherent uncertainty in current cost estimates for future projects is certainly no basis for not approving the LTCP.

Following CRW's additional submissions regarding costs, the Agencies did not formally raise any further concerns with CRW's cost methodology until the Letter. CRW therefore reasonably concluded that the issue had been resolved to the Agencies' satisfaction. Regardless, the record of correspondence and CRW submissions demonstrate the adequacy of CRW's "costing tool" and makes clear that CRW's cost estimating methodology is based on actual project costs and includes an appropriate contingency for planning-level cost estimating, consistent with EPA's own LTCP Guidance.

B. The LTCP Includes Numerous CSO Reduction Projects

The LTCP includes CSO projects that will reduce the volume and frequency of overflows. CRW's LTCP is an Integrated Municipal Stormwater and Wastewater Plan that prioritizes CSOs, unauthorized releases, SSOs, MS4 discharges, and other sources of water quality impairment for control. The LTCP also integrates remedial asset management and system renewal needs that could, if left unaddressed, lead to catastrophic releases of wastewater. As detailed in CRW's LTCP and subsequent submissions, the LTCP establishes the following water quality control priorities:

- Conveyance system and AWTF improvements over the first 20 years that will reduce annual CSO volumes in a typical year by 460 million gallons (58% decrease in CSO volume).
- Pilot installations of decentralized green-grey controls serving 177 managed acres.
- Study of the three priority planning areas as identified in CRW's LTCP to define measures for achieving additional capture in those sub-sewersheds.
- Strategy development for full implementation of a decentralized green-gray control program throughout the collection system, using adaptive management.

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- Stream erosion and sediment controls along Paxton Creek, achieving full compliance with the Paxton Creek Sediment TMDL and achieving near-term goals under the Chesapeake Bay TMDL.
- A coordinated strategy to reduce wet weather flow volumes and attenuate peak flows from the satellite communities to the Spring Creek interceptor.

The above represent specific examples of actual CSO projects that will reduce volume and frequency of overflows that CRW has submitted to the Agencies. Asset management and system rehabilitation, however, remain a priority for CRW. The LTCP demonstrates and explains that comprehensive sewer collection and conveyance system rehabilitation must be a critical component of the LTCP to stabilize and strengthen the current structures and mechanical equipment and to restore and extend the useful life of the sewer systems.

The 1994 CSO Control Policy allows for this type of prioritization based on cost-effectiveness. Specifically, the policy focuses on cost-effectiveness to balance CWA compliance with a community's financial capability to determine an appropriate level of control and timeframe within which the community must achieve that level of control. Notably, two of the four key principles announced in the 1994 CSO Control Policy focus on cost-effectiveness and financial considerations:

- Providing sufficient flexibility to municipalities, especially disadvantaged communities, to consider the site-specific nature of CSOs and to determine the most cost-effective means of reducing pollutants and meeting CWA objectives and requirements.
- Allowing a phased approach to implementation of CSO controls considering a community's financial capability.

For the CRW, this has meant comparing the costs and benefits of increasing plant capacity, implementing CSO controls to achieve capture, and maintaining or replacing existing failing infrastructure to determine which projects will provide the maximum environmental benefit at an affordable cost. CRW has determined that prioritizing the maintenance and replacement of critical failing infrastructure first will provide the maximum environmental benefit. As detailed in CRW's submissions, the LTCP still provides for immediate and near-term expenditures for wet weather control, but CRW cannot successfully implement major investments in wet weather control unless its sewer collection and conveyance systems are in good working order.

It is also important to reiterate the reasons CRW is now in a situation where it has to prioritize asset management. Before CRW was established and assumed management of the system, there had been a long-term pattern of disinvestment by the City of Harrisburg. This is why a financial recovery officer was appointed by the State, and why a judge required that CRW be established. Had there been proper investment in the system for the prior 30 years, CRW would not have a system that is literally crumbling beneath the streets of the state capitol. That is why asset management is such an urgent matter, and why CRW has made that a priority in its LTCP.

As EPA is aware, the Water Infrastructure Improvement Act and EPA's June 5, 2012 *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* provide communities with flexibility to sequence the implementation of CWA obligations by prioritizing the most significant water quality issues first. As detailed

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to the Agencies, CRW must prioritize investments in asset management and system rehabilitation. In this regard, CRW's LTCP does not ignore CSO control projects, it simply prioritizes investments in asset management in the near-term to ensure that future CSO control projects will be effective. Thus, the asset management projects are not an item that is separate from CRW's plan to reduce CSO loadings; the asset management investments will result in far more CSO reductions, on a long-term basis, than through implementation of CSO control projects alone.

CRW has incorporated CSO controls into its LTCP, and its prioritization of asset management in the near-term is consistent with both the CWA and EPA guidance. Nonetheless, in response to the Agencies' formal comments on the LTCP, CRW has provided responses and follow-up information detailing how CRW's investments in system rehabilitation will reduce CSOs, in addition to further discussion of specific CSO control projects that CRW has proposed in its LTCP. Moreover, CRW is proceeding with detailed studies required to assess the most feasible and cost-effective Decentralized Green and Grey CSO Control Opportunities in the three priority planning basins, as identified in the LTCP, including the careful evaluation of in-line system storage, on-street storage and green stormwater infrastructure, and other options.

CRW has not received any formal comment from the Agencies since its August 12, 2019 submission, despite several conference calls and meetings with the Agencies in the interim. Again, CRW reasonably concluded that this issue had been resolved to the Agencies' satisfaction.

C. The LTCP Includes a Thorough Alternatives Analysis Consistent with EPA Guidance

CRW identified a broad range of CSO controls and evaluated alternatives based on cost and performance in accordance with EPA guidance, which expressly authorizes the consideration of costs in evaluating alternatives for CSO control. For example, EPA's 1994 CSO Control Policy states that "long term plans should consider the site-specific nature of CSOs and evaluate the cost effectiveness of a range of control options/strategies." 59 Fed. Reg. 18688, 18691 (April 19, 1994). Similarly, EPA's LTCP Guidance provides:

The LTCP should provide site-specific, cost-effective CSO controls that will provide for attainment of WQS. It should provide flexibility to municipalities in recognition of the variable impacts of CSOs on water quality and the ability of different municipalities to afford varying levels of CSO control. EPA expects that the LTCP will consider a reasonable range of alternatives and varying control levels within those alternatives, using cost-effectiveness as a consideration to help guide consideration of the controls. EPA 832-B-95-002 (September 1995), at pp. 3-3.

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CRW did not exclude technologies in its initial evaluation of alternatives. Rather, consistent with EPA guidance, CRW identified and then evaluated alternatives for cost and performance to develop a set of reasonable control alternatives. EPA guidance is clear that a permittee must first develop alternatives and then evaluate those alternatives, with the evaluation of alternatives expressly contemplating consideration of cost and performance:

The CSO Control Policy states that cost/performance evaluations should be “. . . among the other considerations used to help guide selection of controls.” These analyses typically involve estimating costs for a range of control levels, then comparing performance versus cost and identifying the point of diminishing returns, referred to as the “knee” of the curve.

...

For the development of alternatives, it is likely that more than one alternative will be identified to achieve each level of control. During the alternatives development, a simpler cost/performance approach might be appropriate to eliminate non-cost effective alternatives. LTCP Guidance, at pp. 3-31–3-42

The LTCP details how “[t]he second major phase of Program Plan development process consisted of evaluating available stormwater/wet weather control technologies, categorizing them to fit the baseline, system-wide, and local control strategies, and eliminating from consideration technologies that are not feasible or relevant to implement within CRW’s system.” As described in the LTCP, not until the third phase of the LTCP development process did CRW formulate feasible control strategies and select appropriate control technologies based on “knee-of-the-curve” cost performance analysis, limitations on the level of control achievable within each strategy, and bottom line evaluation criteria. Specifically, in Section 6 of the LTCP, CRW identifies feasible CSO controls without regard to cost and, subsequently in Section 8, evaluates alternative control strategies based on cost and performance.

In addition to the identification of CSO controls and evaluation of alternatives detailed in the LTCP, CRW has provided further evaluation of control technologies to the Agencies, which included on-street surface storage, in-line storage, and satellite high rate treatment. Consistent with EPA guidance, CRW identified a broad range of CSO controls, from which it evaluated alternatives based on cost and performance. CRW has provided ample documentation and information justifying, through consideration of cost and performance, the exclusion of certain technologies from further consideration.

Conclusion

CRW has submitted an “approvable” LTCP that is consistent with the PCD and EPA guidance. Since its initial submission, CRW has provided a significant amount of additional information to respond to the Agencies’ questions and further demonstrate the “approvability” of the LTCP. In the Letter, the Agencies reiterate concerns that CRW has fully considered and addressed, and which CRW had reason to believe had already been resolved. As a result, CRW does not believe that it has violated the PCD, or that stipulated penalties or further enforcement action are warranted.



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Regardless, CRW is eager to provide whatever additional information that might be necessary to support expeditious approval of the LTCP. In addition, as noted above, CRW is working on a proposal to address the Agencies' interest in including some early action items in the LTCP. We hope to schedule a discussion soon to agree on next steps.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charlotte A. Katzenmoyer".

Charlotte Katzenmoyer
Chief Executive Officer

cc Fred Andes, Barnes & Thornburg
Maria D. Bebenek, PADEP
Pamela Lazos, EPA Region 3 ORC
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RE: ***United States v. Capital Region Water and City of Harrisburg***

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CERTIFICATION: I certify under penalty of law that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information herein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

A handwritten signature in cursive script that reads "Charlotte A. Katzenmoyer".

Charlotte Katzenmoyer
Chief Executive Officer

Table 1. EPA Comment and Response History

EPA Comment Category	Line	July 7, 2019 EPA Comment Letter	August 30, 2019 Supplement #1	November 1, 2019 Conference Call (FCA)	November 9, 2019 Response Letter to 7/7/19 Comments	December 21, 2019 Response to 11/1/19 Conference Call on FCA Comments	March 22, 2019 Revised FCA Submission
Scope of CBH_OPP (Integrated Plan / Decentralized Green-Grey)	1	Cover Letter Comment 1 - CBH2OPP "Long Term Control Plan".	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 1 - CBH2OPP is an integrated plan addressing SSOs, MSA, and TMDLs.	Not applicable to discussed topics	Not applicable to discussed topics
	2	Comment 30 - Adoption of stormwater regulations.	Not addressed by Supplement	Not applicable to discussed topics	Response 30 - Enactment anticipated during 2019.	Not applicable to discussed topics	Not applicable to discussed topics
	3	Comment 6 - Limited amount of green infrastructure proposed.	Not addressed by Supplement	Not applicable to discussed topics	Response 6 - Misinterpretation. GI implementation target within first 20 years is 8%.	Not applicable to discussed topics	Not applicable to discussed topics
	4	Comment 14 - Address manhole surcharging/overflows (combined system).	Not addressed by Supplement	Not applicable to discussed topics	Response 14 - Decentralized green-grey strategy reduces CSOs and local system backups/surcharging.	Not applicable to discussed topics	Not applicable to discussed topics
	5	Comment 15 - Address manhole surcharging/overflows (separate system).	Not addressed by Supplement	Not applicable to discussed topics	Response 15 - Decentralized green-grey strategy reduces CSOs and local system backups/surcharging.	Not applicable to discussed topics	Not applicable to discussed topics
	6						
Financial Capability Assessment	7	Cover Letter Comment 5 - FCA does not comply with Partial Consent Decree.	Not addressed by Supplement	• Discussed how suburbs were included in FCA and paying their share of the Plan cost.	Cover Letter Response 5 - Will re revise the RI calc. to reflect satellite comm. incomes, compliance costs.	• CRW is working toward preparing an updated FCA. • Several attachments address additional data requests by EPA.	• FCA complies with PCD and EPA Guidance. • Revised FCA included both suburban MHIIs and compliance costs. • Economic burden was still high.
	8	Comment 1 - Unemployment and MHI have displayed recent encouraging trends.	Not addressed by Supplement	• Discussed the FCA calculation.	Response 1 - Acknowledged.		
	9	Comment 3 - CRW provides service for at least 70,000 persons in wholesale communities.	Not addressed by Supplement	• Discussed how CRW will revise FCA calculation to include both suburb. income, compliance costs.	Response 3 - Acknowledged.		
	10	Comment 21 - Utilized City's MHI, not entire service area; must include satellite customer costs.	Not addressed by Supplement		Response 21 - Reflects wholesale contribution to convey/treat. costs, not collection system.		
Collection and Conveyance System Renewal	11	Cover Letter Comment 6 - Remediation efforts are covered under Nine Minimum Controls.	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 6 - Engineering requirements and costs of remediation exceed NMC expectations.	Not applicable to discussed topics	Not applicable to discussed topics
	12	Comment 9 - Explain how pump station upgrades will contribute to CSO reduction.	Not addressed by Supplement	Not applicable to discussed topics	Response 9 - Increased pumping capacity increases conveyance of wet weather flows to AWTF.	Not applicable to discussed topics	Not applicable to discussed topics
	13	Comment 10 - CRW is prioritizing asset management over CSO/SSO control.	Not addressed by Supplement	Not applicable to discussed topics	Response 10 - Rehab of regulators, interceptors, and pump stations will maximize hydraulic capacity to AWTF.	Not applicable to discussed topics	Not applicable to discussed topics
	14					Not applicable to discussed topics	Not applicable to discussed topics
	15	Comment 19 - Sewer rehabilitation has limited effectiveness in reducing CSO discharge volumes.	Not addressed by Supplement	Not applicable to discussed topics	Response 19 - Rehab to be integrated with green/grey stormwater control opportunities.	Not applicable to discussed topics	Not applicable to discussed topics
Review of all Available Control Technologies	16	Cover Letter Comment 4 - CRW considered limited number of CSO control alternatives.	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 4 - A broad range of technologies and LoCs were screened and evaluated.	Not applicable to discussed topics	Not applicable to discussed topics
	17	Cover Letter Comment 9 - CSO control technologies are not intended to be limited by cost.	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 9 - Technologies were screened on technical feasibility, site constraints.	Not applicable to discussed topics	Not applicable to discussed topics
	18	Comment 5 - Controls use unnecessarily large "minimum feasible size" (e.g. deep tunnel).	Not addressed by Supplement	Not applicable to discussed topics	Response 5 - Min. diameter established by commercially available boring machines; high mob. costs.	Not applicable to discussed topics	Not applicable to discussed topics
	19					Not applicable to discussed topics	Not applicable to discussed topics
	20					Not applicable to discussed topics	Not applicable to discussed topics
	21					Not applicable to discussed topics	Not applicable to discussed topics
	22					Not applicable to discussed topics	Not applicable to discussed topics
	23					Not applicable to discussed topics	Not applicable to discussed topics
	24					Not applicable to discussed topics	Not applicable to discussed topics
	25					Not applicable to discussed topics	Not applicable to discussed topics
	26	Comment 20 - Revise to include evaluation of offline storage controls (e.g. box culverts).	Not addressed by Supplement	Not applicable to discussed topics	Response 20 - Box culverts were evaluated (satellite storage).	Not applicable to discussed topics	Not applicable to discussed topics
	27	Comment 25 - Consider hybrid option for Systemwide Control Strategy 2.	Not addressed by Supplement	Not applicable to discussed topics	Response 25 - High mobilization and fixed costs of deep tunnels diminish cost effectiveness.	Not applicable to discussed topics	Not applicable to discussed topics
	28	Comment 26e - Explain "minimum feasible" sizes for high rate treatment and storage facilities.	Not addressed by Supplement	Not applicable to discussed topics	Response 26e - Factors include technology limitations, location feasibility, facility depths, etc.	Not applicable to discussed topics	Not applicable to discussed topics
	29						
	30						
	31						
Basis for Estimating Costs	32	Comment 23 - Provide additional detailed breakdown regarding alternative cost estimates.	Not addressed by Supplement	Not applicable to discussed topics	Response 23 - Attachments provide examples of cost performance "points" breakdowns.	Not applicable to discussed topics	Not applicable to discussed topics
	33	Comment 24 - Provide cost breakdown for Systemwide Control Strategy 1, Third Control Point.	Not addressed by Supplement	Not applicable to discussed topics	Response 24 - Attachment provides breakdown.	Not applicable to discussed topics	Not applicable to discussed topics
	34	Comment 26a - Provide summary table for LoCs to illustrate how Planning Area costs "fit" together.	Not addressed by Supplement	Not applicable to discussed topics	Response 26a - Attachment summarizes LoCs.	Not applicable to discussed topics	Not applicable to discussed topics
	35	Comment 26b - Provide additional information regarding GI cost estimate assumptions.	Not addressed by Supplement	Not applicable to discussed topics	Response 26b - Estimates derived from PWD documentation provide planning-level costs.	Not applicable to discussed topics	Not applicable to discussed topics
	36						
	37						
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Adaptive Management Process	45	Comment 7 - EPA recommends Adaptive Management Plan submitted every 5 years.	Not addressed by Supplement	Not applicable to discussed topics	Response 7 - CRW agrees to submit Adaptive Management Plan every 5 years.	Not applicable to discussed topics	Not applicable to discussed topics
	46	Comment 26d - Prioritization of CSO control in individual catchments.	Not addressed by Supplement	Not applicable to discussed topics	Response 26d - Target controls for poor performing catchments; adaptive management for rest.	Not applicable to discussed topics	Not applicable to discussed topics
	47	Comment 28 - EPA recommends Adaptive Management Plan every 5 years.	Not addressed by Supplement	Not applicable to discussed topics	Response 28 - CRW agrees to submit Adaptive Management Plan every 5 years.	Not applicable to discussed topics	Not applicable to discussed topics
Achieving Water Quality Objectives	48	Cover Letter Comment 2 - Plan does not achieve water quality objectives for designated uses.	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 2 - Will achieve compliance beyond 20-yr implementation phases.	Not applicable to discussed topics	Not applicable to discussed topics
	49	Cover letter Comment 3 - CRW selected Presumption Approach, but does not achieve 85% capture.	Not addressed by Supplement	Not applicable to discussed topics	Cover letter Response 3 - Work w/EPA through adaptive mgmt. to define compliance endpoints.	Not applicable to discussed topics	Not applicable to discussed topics
	50	Cover Letter Comment 7 - Measures between years 10 to 20 only result in 1% additional CSO capture.	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 7 - Focus of immediate implementation Phase is to recover functionality.	Not applicable to discussed topics	Not applicable to discussed topics
	51	Cover Letter Comment 8 - Selected controls must bring all CSO discharge points into full compliance.	Not addressed by Supplement	Not applicable to discussed topics	Cover Letter Response 8 - Understood that this is the ultimate long-term goal.	Not applicable to discussed topics	Not applicable to discussed topics
	52	Comment 13 - Fully implemented plan would still have 30 to 50 overflows/year.	Not addressed by Supplement	Not applicable to discussed topics	Response 13 - 20-yr Plan not "full implementation"; ultimate goal to achieve water qual. objectives.	Not applicable to discussed topics	Not applicable to discussed topics
	53	Comment 22 - LoCs (Baseline, Affordable, Cost-Effective) are based on costs, not performance.	Not addressed by Supplement	Not applicable to discussed topics	Response 22 - LoCs not "end points"; response summarizes GI targets/costs beyond 20-year Plan.	Not applicable to discussed topics	Not applicable to discussed topics
	54	Comment 26c - Average CSO activation frequency for each Planning Area is not a useful metric.	Not addressed by Supplement	Not applicable to discussed topics	Response 26c - Receiving water impacts should be measured on a reach-by-reach basis.	Not applicable to discussed topics	Not applicable to discussed topics
	55	Comment 32b - CSO capture increases to 79% by Year 10, but only an additional 1% by Year 20.	Not addressed by Supplement	Not applicable to discussed topics	Response 32b - Financial capability consumed by baseline; future phases beyond Year 20.	Not applicable to discussed topics	Not applicable to discussed topics
Identification of Specific Projects	56	Comment 29 - Provide additional information regarding pilot projects.	• CRW provided a list of specific AWTF, conveyance, and collection system GSI/rehab projects.	Not applicable to discussed topics	Response 29 - Attachment table provides detailed information on GSI pilot projects.	Not applicable to discussed topics	Not applicable to discussed topics
	57	Comment 32a - Plan does not commit to implementing specific projects.		Not applicable to discussed topics	Response 32a - Attachment tables provide detailed information on specific projects.	Not applicable to discussed topics	Not applicable to discussed topics
	58			Not applicable to discussed topics			
	59	Comment 32c - Provide descriptions for proposed remedial projects.		Not applicable to discussed topics	Response 32c - Attachment tables provide detailed information on specific projects.	Not applicable to discussed topics	Not applicable to discussed topics
Post Construction Monitoring Plan	60	Comment 31a - PCMP does not contemplate monitoring at end of 20-yr planning horizon.	Not addressed by Supplement	Not applicable to discussed topics	Response 31a - Year 20 is not considered the end-point of the program.	Not applicable to discussed topics	Not applicable to discussed topics
	61	Comment 31b - PCMP must be adequate to verify compliance with water quality standards.	Not addressed by Supplement	Not applicable to discussed topics	Response 31b - Comprehensive water quality monit. program will be implemented after future phases.	Not applicable to discussed topics	Not applicable to discussed topics
	62	Comment 31c - Limited flow monitoring to support model validation/recalibration.	Not addressed by Supplement	Not applicable to discussed topics	Response 31c - Proposed level of monitoring is sufficient to revalidate H&H model.	Not applicable to discussed topics	Not applicable to discussed topics
	63	Comment 31d - PCMP does not specify what will constitute model validation.	Not addressed by Supplement	Not applicable to discussed topics	Response 31d - Requirements are the same as used for original calibration/validation.	Not applicable to discussed topics	Not applicable to discussed topics
	64	Comment 31e - Policy requires permittee to conduct water quality monitoring.	Not addressed by Supplement	Not applicable to discussed topics	Response 31e - CRW would like to partner w/EPA/DEP to establish site-specific criteria.	Not applicable to discussed topics	Not applicable to discussed topics
H/H Model / CSO Statistics / Flow Monitoring	65	Comment 12 - Clarify how percent capture is being calculated.	Not addressed by Supplement	Not applicable to discussed topics	Response 12 - Percent captured methodology and calculations were provided.	Not applicable to discussed topics	Not applicable to discussed topics
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	67						
	68						
Other	69	Comment 2 - CSO warning signs should indicate untreated sewage poses health risk.	Not addressed by Supplement	Not applicable to discussed topics	Response 2 - Signs installed in the future will be revised accordingly.	Not applicable to discussed topics	Not applicable to discussed topics
	70	Comment 4 - Regarding SCI SSOs (due to suburban communities), describe regional plan.	Not addressed by Supplement	Not applicable to discussed topics	Response 4 - Tech memo sent to suburban communities; meeting held.	Not applicable to discussed topics	Not applicable to discussed topics
	71	Comment 8 - Limited public meeting attendees; limited stakeholder meetings too late in process.	Not addressed by Supplement	Not applicable to discussed topics	Response 8 - Public engagement / Community Greening Plan; public engagement ongoing.	Not applicable to discussed topics	Not applicable to discussed topics
	72	Comment 11 - Weirs at low elevations should be candidate for weir height increases.	Not addressed by Supplement	Not applicable to discussed topics	Response 11 - Baseline modifications include raising weir crest elevations.	Not applicable to discussed topics	Not applicable to discussed topics
	73	Comment 16 - Identify all water quality parameters which standard exceedances have occurred.	Not addressed by Supplement	Not applicable to discussed topics	Response 16 - Accepted tech memos summarizing Pollutants of Concerns / Sensitive Areas.	Not applicable to discussed topics	Not applicable to discussed topics
	74	Comment 17 - Confirm all Pollutants of Concern identified for Susquehanna/Paxton.	Not addressed by Supplement	Not applicable to discussed topics	Response 17 - Tech memo summarizing "Pollutants of Concern" considered accepted.	Not applicable to discussed topics	Not applicable to discussed topics
	75	Comment 18 - No Sensitive Areas identified despite Susquehanna River recreation.	Not addressed by Supplement	Not applicable to discussed topics	Response 18 - Tech memo summarizing "Sensitive Areas" considered accepted.	Not applicable to discussed topics	Not applicable to discussed topics
	76	Comment 26f - Provide information on SCI flows (regarding wholesale customers' impact on CSS).	Not addressed by Supplement	Not applicable to discussed topics	Response 26f - Attachment figure shows SCI does not limit Hemlock Street Interceptor.	Not applicable to discussed topics	Not applicable to discussed topics
	77	Comment 27 - Higher treatment for AWTF bypass; analyze extending treatment through secondary.	Not addressed by Supplement	Not applicable to discussed topics	Response 27 - There is not sufficient space at AWTF to expanding secondary facilities.	Not applicable to discussed topics	Not applicable to discussed topics

Table 1. EPA Comment and Response History

EPA Comment Category	Line	July 18, 2019	August 12, 2019	September 10, 2019	October 17, 2019	October 31, 2019
		EPA Comment Letter	Response Letter to 7/18/19 Comments	Meeting with EPA	Meeting with EPA	Response to October 2019 Technical Information Requests
Scope of CBH_OPP (Integrated Plan / Decentralized Green-Grey)	1	Cover Letter Comment 1 - Cost-benefit needs to be revised accordingly.	Cover Letter Response 1 - Plan provides necessary cost-benefit comparisons.	No further comments from EPA	• Discussed how alternatives analysis demonstrated decentralized grey-green approach was optimal for the CRW Plan . • Improvements will be implemented within FCA constraints.	
	2	No further comments from EPA		No further comments from EPA		
	3	No further comments from EPA		No further comments from EPA		
	4	EPA Specific Comment 14 - Explain how limited GI will have a significant impact on sewer surcharging.	CRW Specific Response 14 - FCA indicates another 30 to 80 yrs to fully implement the required controls.	No further comments from EPA		
	5	No further comments from EPA		No further comments from EPA		
	6			No further comments from EPA		
Financial Capability Assessment	7	No further comments from EPA		• Presented FCA.	No further comments from EPA	
	8	No further comments from EPA		• Discussed financial constraints.	No further comments from EPA	
	9	No further comments from EPA		• Discussed how suburban communities contribute to control facilities.	No further comments from EPA	
	10	No further comments from EPA			No further comments from EPA	
Collection and Conveyance System Renewal	11	Cover Letter Comment 6 - In first 20 years, few improvements to reduce beyond 80% capture.	Cover Letter Response 6 - Hydraulic capacity enhancements increase capture from 50 to 80%.	• Plan considered full range of hydraulic capacities and LoCs.	• Discussed analysis for sizing the pump stations. • A full range of hydraulic capacities and LoCs were evaluated. • Explained the need for system rehabilitation and renewal.	
	12	EPA Specific Comment 9 - Provide supporting information on the sizing of the pump stations.	CRW Specific Response 9 - Range of alternative hydraulic capacities for pump stations (Sect 8.3.1.1).	• Explained need for system rehabilitation and renewal.		
	13	EPA Specific Comment 10a - Provide additional data to support CSO reduction focus claim.	CRW Specific Response 10a - Not performing critical repairs could result in catastrophic failure.			
	14	EPA Specific Comment 10b - Proposed projects merely match the capacities of U/S and/or D/S assets.	CRW Specific Response 10b - Alternatives developed go far beyond simply matching U/S / D/S capacities.	• Discussed pump station sizing.		
	15	No further comments from EPA		No further comments from EPA		
Review of all Available Control Technologies	16	No further comments from EPA		No further comments from EPA	• A broad range of technologies and LoCs were screened and evaluated and were not limited by cost.	
	17	Cover Letter Comment 9 - Must evaluate the cost effectiveness of a range of control options.	Cover Letter Response 9 - Request is explicitly satisfied by Section 8 of the CBH2OPP.	No further comments from EPA		
	18	EPA Specific Comment 5a - EPA has concerns against after-the-fact planning of real time control.	CRW Specific Response 5a - RTC potential will be analyzed during detailed design of facilities.	• Discussed System Control Strategy 1 and System Control Strategy 2 cost-performance curves (and assumptions) in detail.		No further comments from EPA
	19	EPA Specific Comment 5b - Combination of surface collectors, small tunnels, etc. may be practicable.	CRW Specific Response 5b - These control elements are covered in Systemwide Control Strategy 1.			No further comments from EPA
	20	EPA Specific Comment 5c - A larger diameter/ shorter length tunnel may be more cost-effective.	CRW Specific Response 5c - High mob. costs cause relatively short installation to be less cost-effective.			No further comments from EPA
	21	EPA Specific Comment 5d - Shaft spacing is similar to that provided for most interceptor sewers.	CRW Specific Response 5d - Cost of work/access shafts exceed traditional manhole installation costs.			No further comments from EPA
	22	EPA Specific Comment 5e - Arithmetic in Bullet Point 4 / minimum tunnel length of 52,000.	CRW Specific Response 5e - 14 MG corresponds to tunnel length of 30,000 ft (20% open).			No further comments from EPA
	23	EPA Specific Comment 5f - Tunnels can be constructed at shallower depths, reducing costs.	CRW Specific Response 5f - Evaluations fully encompass the range of feasible alternatives.			No further comments from EPA
	24	EPA Specific Comment 5g - Unnecessarily restrictive assumptions in development of tunnel alternative.	CRW Specific Response 5g - CRW disagrees; will discuss during September meeting.			No further comments from EPA
	25	EPA Specific Comment 5h - Consider RTC with diversion structure improvements.	CRW Specific Response 5h - RTC will be investigated during detailed design.			No further comments from EPA
	26	EPA Specific Comment 20 - Provide additional info on local storage; integrated treatment/storage.	CRW Specific Response 20 - End-of-pipe storage/treatment compared w/decentralized controls.			• Discussed how decentralized storage was evaluated in Plan.
	27	EPA Specific Comment 25 - Micro-tunneling (smaller diameter); shorter lengths / larger diameter.	CRW Specific Response 25 - Shorter/deep tunnel requires consolidation, larger drop-shafts, etc.			No further comments from EPA
	28	EPA Specific Comment 26e - Provide specific info; integrated treatment/storage not considered.	CRW Specific Response 26e - Min. practical sizing based on high rate clarification flow of 6.7 MGD.	No further comments from EPA		
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	31					
Basis for Estimating Costs	32	EPA Specific Comment 23 - Not sufficient; provide additional detailed breakdowns.	CRW Specific Response 23 - Cost estimate approach is appropriate (additional info available).	• Discussed Baseline, System Control Strategy 1, and System Control Strategy 2 cost curves in detail.	No further comments from EPA	
	33	EPA Specific Comment 24 - Provide cost calculation for these alternatives.	CRW Specific Response 24 - To be discussed during September meeting.		No further comments from EPA	
	34	EPA Specific Comment 26a - Table 5 costs too broad; allocate Tables 1 to 4 costs to Planning Areas /LoCs.	CRW Specific Response 26a - To be discussed during September meeting.		No further comments from EPA	
	35	EPA Specific Comment 26b - Documentation for GI may be out-of-date, non-reflective of Harrisburg.	CRW Specific Response 26b - GI implementation costs have adequate support (to be discussed).		No further comments from EPA	
	36	Supplement 1, Tables 1-1 through 1-3 Provide supporting financial data.	Supplement 1, Tables 1-1 through 1-3 Response To be discussed during September meeting.	• Discussed GI life-cycle costs.	No further comments from EPA	
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Adaptive Management Process	45	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	46	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	47	No further comments from EPA		No further comments from EPA	No further comments from EPA	
Achieving Water Quality Objectives	48	Cover Letter Comment 2 - Must include schedule to achieve water quality standards.	Cover Letter Response 2 - Full compliance requires 50 plus year implementation period.	No further comments from EPA	No further comments from EPA	
	49	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	50	Cover Letter Comment 7 - Revise Plan to achieve greater CSO capture after Year 10.	Cover Letter Response 7 - CSO control during years 10 through 20 are limited by available funding.	• Discussed graphics showing number of overflows.	No further comments from EPA	
	51	Cover Letter Comment 8 - Revise Plan to include all measures to achieve compliance (and schedule).	Cover Letter Response 8 - Adaptive management will be used to implement controls.		• Achieving water Quality objectives will require 50+ years. • Full implementation is not achieved within first 20 years.	
	52	EPA Specific Comment 13 - Provide additional info on number of overflow events during each stage.	CRW Specific Response 13 - Requested information already included in Section 8.4 of Plan.			
	53	EPA Specific Comment 22 - Revise alternative analysis to achieve performance per CSO Policy.	CRW Specific Response 22 - Section 8 evaluated the full range of CSO control alternatives/levels.		No further comments from EPA	
	54	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	55	EPA Specific Comment 32b - Provide new info demonstrating focus on water quality objectives.	CRW Specific Response 32b - Ultimate CSO control to meet water quality objectives requires 50 plus yrs.	No further comments from EPA	No further comments from EPA	
Identification of Specific Projects	56	EPA Specific Comment 29 - Provide additional info on 6 of 11 GSI pilots (Supplement 1, Table 1-3).	CRW Specific Response 29 - To be discussed during September meeting.	• Presented overview of completed capital projects since 2013.	No further comments from EPA	
	57	EPA Specific Comment 32 - Supplement 1 / Provide list of projects to be undertaken after Year 2022	CRW Specific Response 32 - Adaptive Management reporting will provide lists of specific projects.		No further comments from EPA	
	58	EPA Specific Comment 32a - Supplement 1 states CRW can improve on 1% capture during years 10-20.	CRW Specific Response 32a - PCI rehab complications negate expectations of improvement.		No further comments from EPA	
	59	EPA Specific Comment 32c - Provide additional info on GI/Collection System Projects in years 1 - 10.	CRW Specific Response 32c - To be discussed further during September meeting.		No further comments from EPA	
Post Construction Monitoring Plan	60	EPA Specific Comment 31a - EPA recommends a timetable targeting measures after Year 10.	CRW Specific Response 31a - Plan already includes monitoring after Year 10.	• Discussed model revalidation (every six months).	• Monitoring program characterizes suburban flow. • Discussed previous water quality analyses and conclusions. • Discussed water quality monitoring and analyses in the Plan.	
	61	EPA Specific Comment 31b - EPA strongly recommends monitoring be performed periodically.	CRW Specific Response 31b - Ongoing monitoring, H/H modeling to continue though Year 20.	• Discussed continuous flow level sensing.		
	62	EPA Specific Comment 31c - Propose monitoring adequate to identify changes in CSO discharges.	CRW Specific Response 31c - PCMP will be adequate to clearly identify changes in CSO discharges.			
	63	EPA Specific Comment 31d - WaPUG criteria is the preferred method of model calibration/validation.	CRW Specific Response 31d - WaPUG criteria was/will be used for model calibration/validation.	• Discussed how satellite flow is continuously monitored.		
	64	EPA Specific Comment 31e - Conduct water quality monitoring regardless of PADEP involvement.	CRW Specific Response 31e - CRW commits sampling will be conducted in partnership w/PADEP.			
H/H Model / CSO Statistics / Flow Monitoring	65	EPA Specific Comment 12 - Confirm percent capture includes only flows in the combined sewer system.	CRW Specific Response 12 - Doesn't include flows from suburban community SS collection systems.	• Discussed CSO capture methodology.	• CSO percent capture methods and calculations were discussed.	
	66				Existing Conditions CSO Discharge Statistics - Request overflow volume/ durations, 15 largest storms (each CSO).	Existing Conditions CSO Discharge Statistics - Provided overflow volume/ durations, 15 largest storms (each CSO).
	67				Flow and Precipitation Monitoring - Request for summary of flow/ precipitation monitoring to date.	Flow and Precipitation Monitoring - Provided summary of flow/ precipitation monitoring to date.
	68				Computation of Percent Capture - Request for detailed description of method to compute percent capture.	Computation of Percent Capture - Provided detailed description of method to computer percent capture.
Other	69	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	70	EPA Specific Comments 3 and 4 - EPA requests tech memo/minutes, and update on regional plan.	CRW Specific Responses 3 and 4 - CRW will provide tech memo/minutes; proposed approach to plan.	No further comments from EPA	No further comments from EPA	
	71	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	72	EPA Specific Comment 11 - Provide additional info regarding adjustment of weir heights.	CRW Specific Response 11 - Planning level weir heights are included in the Plan.	No further comments from EPA	• Discussed use of SmartCovers® at CSO regulator structures.	
	73	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	74	EPA Specific Comment 17 - Revise Plan to include sediment/TSS as PoC for the Susquehanna River.	CRW Specific Response 17 - CRW will revise Plan to include sediment/TSS as a PoC.	• Discussed water quality monitoring.	TSS as a Pollutant of Concern - Address EPA desire to include TSS as PoC.	
	75	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	76	No further comments from EPA		No further comments from EPA	No further comments from EPA	
	77	No further comments from EPA		No further comments from EPA	No further comments from EPA	

Table 1. EPA Comment and Response History

EPA Comment Category	Line	November 14, 2019	November 27, 2019	December 3, 2019	January 6, 2020	January 15, 2020	February 26, 2020
		PG Environmental Review of Appendix A	Response to PG Environmental Review of Appendix B	Confidence Call	Response to On-Street Storage / Decentralized Controls	Meeting with EPA	Meeting with EPA
Scope of CBH_OPP (Integrated Plan / Decentralized Green-Grey)	1	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	2	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	3	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	4	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	5	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	6	No further comments from EPA		Control volumes, strategies - EPA: CSO discharge tables are excellent.	Control volumes and strategies - Baseline level of control	Discussed details for the baseline level of control.	No further comments from EPA
Financial Capability Assessment	7	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	8	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	9	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	10	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
Collection and Conveyance System Renewal	11	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	12	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	13	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	14	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	15	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
Review of all Available Control Technologies	16	No further comments from EPA		Agreed decentralized green/ grey approach is optimal.	Agreed decentralized green/ grey approach is optimal.	No further comments from EPA	No further comments from EPA
	17	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	18	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	19	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	20	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	21	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	22	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	23	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	24	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	25	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	26	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	27	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	28	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	29			On-street storage: Cost effective control method.	Only appropriate for controlling large/infrequent storms	Agreed on-street storage would be one of the "tool-box alternatives".	No further comments from EPA
	30			In-line storage: Cost effective control method.	Limited potential (shallow sewers/ potential basement backups).	Agreed in-line storage would be one of the "tool-box alternatives".	No further comments from EPA
	31			High rate satellite treatment: Should be considered.	Clarified greater size, peak flow assumptions are necessary.	No further comments from EPA	No further comments from EPA
Basis for Estimating Costs	32	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	33	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	34	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	35	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	36	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	37	General Comment 1 - Inconsistent ENRCCI and RSMeans factors.	General Comment 1 - Costs based on current ENRCCI / Harrisburg RSMeans; design analyses.	No further comments from EPA		No further comments from EPA	No further comments from EPA
	38	Specific Comment 1 - Contingencies to convert to total project costs appropriate.	Specific Comment 1 - Acknowledged.	<ul style="list-style-type: none">Discussed contingencies.Discussed construction vs project costs.Discussed GSI lifecycle cost assumptions.Discussed actual costs for CRW projects.		No further comments from EPA	No further comments from EPA
	39	Specific Comment 2 - GI unit costs; project cost estimates.	Specific Comment 2 - Based on the Phila LTCPU cost appendix, more recent cost analyses.			No further comments from EPA	No further comments from EPA
	40	Specific Comment 3 - GI lifespan assumptions exaggerated/ long-term costs underestimated.	Specific Comment 3 - Lifespan estimates assume regular and consistent maintenance.			No further comments from EPA	No further comments from EPA
	41	Specific Comment 4 - CIPP unit costs are "grossly" overestimated.	Specific Comment 4 - These unit costs not used; separate analysis (rapid assessment).			Discussed sewer rehabilitation cost contingencies.	Presented actual costs for CRW projects
	42	Specific Comment 5 - Sewer separation costs "substantially" inflated.	Specific Comment 5 - Sewer separation costs assumptions relevant to Harrisburg conditions.	No further comments from EPA		No further comments from EPA	No further comments from EPA
	43	Specific Comment 6 - Construction costs for inline storage tanks, on-street storage not	Specific Comment 6 - New pipe costs for inline storage; narrow streets (on-street storage).	No further comments from EPA		No further comments from EPA	No further comments from EPA
	44	Specific Comment 7 - Base cost data for other sections may be outdated.	Specific Comment 7 - Attachment shows project cost validation points.	No further comments from EPA		No further comments from EPA	No further comments from EPA
Adaptive Management Process	45	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	46	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	47	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
Achieving Water Quality Objectives	48	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	49	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	50	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	51	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	52	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	53	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	54	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	55	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
Identification of Specific Projects	56	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	57	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	58	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	59	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
Post Construction /Monitoring Plan	60	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	61	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	62	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	63	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	64	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
H/H Model / CSO Statistics / Flow Monitoring	65	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	66	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	67	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	68	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
Other	69	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	70	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	71	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	72	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	73	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	74	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	75	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	76	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA
	77	No further comments from EPA		No further comments from EPA		No further comments from EPA	No further comments from EPA